



## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 7

[Docket ID OCC-2020-0026]

RIN 1557-AF11

### National Banks and Federal Savings Associations as Lenders

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule; Congressional Review Act revocation.

**SUMMARY:** Under the Congressional Review Act (CRA), Congress has passed and the President has signed a joint resolution disapproving the Office of the Comptroller of the Currency's (OCC) final rule titled "National Banks and Federal Savings Associations as Lenders." This final rule established a test to determine when a national bank or Federal savings association (bank) makes a loan and is the "true lender," including in the context of a relationship between a bank and a third party, such as a marketplace lender. Under the joint resolution and by operation of the CRA, this rule has no legal force or effect. The OCC is hereby removing it from the Code of Federal Regulations.

**DATES:** This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, Alison MacDonald, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel's Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649-5597.

**SUPPLEMENTARY INFORMATION:** On July 22, 2020, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a notice of

proposed rulemaking proposing a test to determine when a national bank or Federal savings association (bank) makes a loan and is the “true lender” (85 FR 44223). The OCC published the final rule, titled “National Banks and Federal Savings Associations as Lenders” and codified at 12 CFR § 7.1031, in the **Federal Register** on October 30, 2020 (85 FR 68742). The final rule provided that a bank makes a loan if, as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan. The final rule became effective on December 29, 2020.

The United States Senate passed a joint resolution (S.J. Res. 15) on May 11, 2021 disapproving of the rule under the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The United States House of Representative passed S.J. Res. 15 on June 24, 2021. President Joseph R. Biden signed the joint resolution into law as Public Law 117-24 on June 30, 2021. Under the joint resolution and by operation of the CRA, the rule has no legal force or effect. Accordingly, the OCC is hereby removing 12 CFR § 7.1031 from the Code of Federal Regulations (CFR).

This action is not an exercise of the OCC’s rulemaking authority under the Administrative Procedure Act (APA) because the OCC is not “formulating, amending, or repealing a rule” under 5 U.S.C. 551(5). Rather, the OCC is effectuating changes to the CFR to reflect what congressional action has already accomplished. Accordingly, the OCC is not soliciting comments on this action, nor is it delaying the effective date.

#### **List of Subjects in 12 CFR Part 7**

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

#### **Office of the Comptroller of the Currency**

For the reasons set forth above, and pursuant to the CRA (5 U.S.C. 801 *et seq.*) and Pub. L. 117-24, 135 Stat. 296, the OCC amends 12 CFR part 7 as follows:

## **PART 7—ACTIVITIES AND OPERATIONS**

1. The authority citation for part 7 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

### **§ 7.1031 [Removed]**

2. Remove §7.1031.

**Michael J. Hsu,**

*Acting Comptroller of the Currency*

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